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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

SENECA GAMING CORPORATION,

Plaintiff,

v.

MERRILL LYNCH, PIERCE, FENNER & SMITH,
INCORPORATED,

Defendant.

CIVIL ACTION NO.
1:09-cv-6969 (LAP)

ECF Case

**NOTICE OF MOTION TO
DISMISS PLAINTIFF'S
COMPLAINT**

PLEASE TAKE NOTICE that upon the annexed Declaration of Dimitri Nemirovsky, and accompanying Memorandum of Law, Defendant Merrill Lynch, Pierce, Fenner & Smith Incorporated will move this Court before the Honorable Loretta A. Preska of the United States District Court for the Southern District of New York, 500 Pearl Street, New York, New York 10007, for an order dismissing the Complaint in its entirety and with prejudice pursuant to Federal Rules of Civil Procedure 12(b)(6) and 9(b) and the Private Securities Litigation Reform Act of 1995, 15 U.S.C. § 78u-4.

Dated: January 4, 2010

Respectfully submitted,

s/ Dimitri Nemirovsky
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OF COUNSEL:

A. Inge Selden III (motion for phv admission in process of being filed)
Carl S. Burkhalter (motion for phv admission in process of being filed)

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